IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 530

UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFFILIATED WITH THE CONGRESS OF INDUSTRIAL ORGANIZATIONS, UAW-CIO,
Appellant,
vs.
WISCONSIN EMPLOYMENT RELATIONS BOARD and KOHLER CO., a Wisconsin corporation,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF WISCONSIN

JURISDICTIONAL STATEMENT

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ON APPEAL FROM THE SUPREME COURT OF WISCONSIN

JURISDICTIONAL STATEMENT

The appellant appeals from a judgment of the Supreme Court of Wisconsin entered on the 3d day of May, 1955, affirming the Circuit Court of Sheboygan County, Wisconsin, enforcing an order of the Wisconsin Employment Relations Board, and submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the Supreme Court of Wisconsin is reported in 269 Wis. 578, 70 N. W. 2d 191. The opinions of the Circuit Court and the Wisconsin Employment Relations Board are not reported. The opinion of the Supreme Court of Wisconsin is attached hereto as Appendix C. Copies of the opinions, findings of fact, conclusions of law and judgments of the Circuit Court and of the Wisconsin Employment Relations Board are attached hereto as Appendices D and E.

JURISDICTION

This case was initiated by the filing of a complaint with the Wisconsin Employment Relations Board by the Kohler Company (R. 121)[1] charging appellant (and others) with unfair labor practices within the meaning of the Wisconsin Employment Peace Act (Wisconsin Statutes 1953, Ch. 111, subch. 1). The Wisconsin Board, on May 21, 1954, entered an order finding appellant (and others) guilty of unfair labor practices and directing them to cease and desist from commission of certain practices (R. 113; Appendix E). On petition by the Wisconsin Board for enforcement of and by appellant (and others) to set aside the order, the Circuit Court of Sheboygan County, Wisconsin, enforced the Board's order in an opinion dated August 30, 1954 (R. 101, Appendix D). The judgment enforcing the order

[1] Record references thus designated refer to page numbers in the brief and appendix filed by appellants in the Supreme Court of Wisconsin which, together with the brief and supplemental appendix filed by appellee Kohler Company will constitute the printed record certified by the Wisconsin court on this appeal.

was entered September 1st, that dismissing the petition to set aside the order on September 9, 1954. The appeals from both judgments were consolidated for hearing in the Supreme Court of Wisconsin, which, on May 3, 1955, entered a single opinion and judgment affirming the Circuit Court of Sheboygan County. A timely motion for rehearing filed on May 21, 1955 was denied on June 28, 1955. Notice of appeal was filed in the Wisconsin Supreme Court on the 23d day of September, 1955. The jurisdiction of the Supreme Court to review this decision by appeal is conferred by Title 28, U. S. C. Section 1257 (2), since the validity of a state statute on grounds of repugnancy to a law and the Constitution of the United States is drawn in question. The following cases are believed to sustain the jurisdiction of the Supreme Court to review the judgment in this case: *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767; 67 Sup. Ct. 1026; *United Gas, C. & C. Workers v. Wisconsin Employment Relations Board*, 340 U. S. 383; 71 Sup. Ct. 339; *LaCrosse Telephone Company v. Wisconsin Employment Relations Board*, 336 U. S. 18; 69 Sup. Ct. 379; *Hill v. Florida*, 325 U. S. 538; 65 Sup. Ct. 1373; *International Union, U. A. W. A., A. F. of L. Local 232 v. Wisconsin Employment Relations Board, et al.*, 336 U. S. 245; 69 Sup. Ct. 516.

QUESTIONS PRESENTED

1. Whether the State of Wisconsin, in an unfair labor practice proceeding under its labor statute, the Wisconsin Employment Peace Act, may enjoin conduct of a labor organization affecting inter-state commerce which has been made an unfair labor practice under the National Labor Relations Act, as amended, in view of this Court's admonition (in *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468) that

"a state may not enjoin under its own labor statute conduct which has been made an 'unfair labor practice' under the federal statute".

2. Whether the State of Wisconsin may regulate conduct of a labor organization affecting interstate commerce which has been made an unfair labor practice under the National Labor Relations Act, as amended.

3. Whether the State of Wisconsin may in any manner (except as the enforcement of criminal laws of general applicability may constitute "regulation") regulate conduct of a labor organization affecting interstate commerce which has been made an unfair labor practice under the National Labor Relations Act, as amended.

4. Whether the State of Wisconsin, under its own labor statute or otherwise (except by enforcing its criminal laws of general applicability) may regulate conduct of a labor organization affecting interstate commerce which has been made an unfair labor practice under the National Labor Relations Act, as amended, where the National Labor Relations Board at the time of the State proceeding had asserted and was asserting jurisdiction in representation and unfair labor practice proceedings under the federal statute over the same employer-union relationship.

5. Whether, assuming that only some of the conduct involved is an unfair labor practice under the National Labor Relations Act, as amended, the State of Wisconsin is not obligated to segregate such conduct and limit its regulation to that which is neither protected nor prohibited under the federal act, and then only after a determination by the National Labor Relations Board that the particular conduct involved is not so protected or prohibited.

STATUTES INVOLVED

Wisconsin Statutes:

Section 111.04;
Section 111.06 (2)(a)(f);
Section 111.07.

National Labor Relations Act, June 23, 1947, Ch. 120, Title I, Sec. 101, 61 Stat. 136; 29 U. S. C. 151-167:

61 Stat. 140, 29 U. S. C. 157
61 Stat. 140, 29 U. S. C. 158(b)(1)
61 Stat. 146, 29 U. S. C. 160(a)
61 Stat. 146, 29 U. S. C. 160(j)

Texts are set out in Appendices A and B.

STATEMENT

The appellant, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, and its Local Union 833, were certified by the National Labor Relations Board as collective bargaining representative of all production workers of the Kohler Company on June 19, 1952. The certification followed a representation proceeding and election conducted by the National Labor Relations Board pursuant to Section 9 of the National Labor Relations Act, as amended. An earlier representation proceeding involving the same parties is reported at 93 NLRB 398.

On February 23, 1953, the appellant and its Local Union 833 UAW-CIO on behalf of the production workers of the Kohler Company executed a collective bargaining agreement which expired March 1, 1954.

Prior to January 1, 1954, pursuant to the requirements of Section 8 (d) of the National Labor Relations Act, as amended, notice was given to the Kohler Company of the intended termination of said contract as of March 1, 1954 (R. 118). In response to that notice of termination and acting under the authority of the National Labor Relations Act, as amended, the Federal Mediation and Conciliation Service intervened and assisted in negotiations for a new contract (R. 119). The parties were unable to reach an agreement for a new contract and on April 5, 1954, the production employees of the Kohler Company went on strike and picketed the premises.

On April 15, 1954, the Kohler Company filed a complaint with the Wisconsin Employment Relations Board, charging appellant (and others) with unfair labor practices within the meaning of the Wisconsin Employment Peace Act, Wisconsin Statutes 1953, Ch. 111, subch. 1 (R. 121). The gist of the complaint was that appellant (and others) had engaged in mass picketing, obstruction of ingress to and egress from the plant, violence and threats of violence all in contravention of the Wisconsin labor statute. The answer to the complaint challenged the jurisdiction of the Wisconsin Employment Relations Board to proceed with the hearing, on the ground that the National Labor Relations Board had exclusive jurisdiction over the subject matter (R. 125-126).

After hearing, which ended on May 19, 1954, the Wisconsin Employment Relations Board entered an order on May 21, 1954, finding appellant (and others) guilty of unfair labor practices within the meaning of the Wisconsin Employment Peace Act. The Board concluded that appellant (and others) had:

> "* * * violated Section 111.06 (2) (a) of the Wisconsin Statutes by picketing the domicile of persons

desiring to work at the Kohler Company, and Section 111.06 (2) (f) of the Wisconsin Statutes by hindering and preventing persons desiring to be employed by the Kohler Company by means of massed picketing and by means of obstructing and interfering with entrance to and egress from the plant of the Kohler Company and by obstructing and interfering with the free and uninterrupted use of the public roads, streets and highways" (R. 115).

On August 30, 1954, the Circuit Court of Sheboygan County, Wisconsin, entered an opinion (R. 101, Appendix D) on a petition by the Wisconsin Employment Relations Board dated May 25, 1954 (R. 109-112) for enforcement of and on a petition by appellant (and others) for review of the order. The Court enforced the Board's order as against appellant's contention that the subject matter of the proceeding was pre-empted by the National Labor Relations Act, as amended, and that the National Labor Relations Board had exclusive jurisdiction, and that the Wisconsin tribunals accordingly were without jurisdiction over the subject matter. The Court specifically dealt with these contentions in its opinion (R. 103, 104, Appendix D).

Appeal was taken to the Supreme Court of Wisconsin which on the 3d day of May, 1955, after consolidated hearing rendered a single opinion and judgment affirming both judgments (on the two petitions) of the Circuit Court for Sheboygan County. A motion for rehearing was denied on June 28, 1955. The Supreme Court of Wisconsin addressed a major part of its opinion to the contention, again advanced, that the State of Wisconsin was without jurisdiction in these proceedings for the reason that "federal labor legislation has pre-empted the field and the National Labor Relations Board has exclusive jurisdiction over this controversy which grows out of and affects labor relations". (Appendix C.)

Throughout the period involved the National Labor Relations Board has continued to exercise its jurisdiction over the labor relations of the Kohler Company in the following several proceedings:

On charges filed on November 2, 1951 and May 5, 1952 by individual employees and also on May 5, 1952 by an independent labor organization which later affiliated with appellant, the National Labor Relations Board issued a consolidated complaint and, on April 12, 1954, filed a decision and order finding the Kohler Company guilty of unfair labor practices within the meaning of Section 8 of the National Labor Relations Act, as amended, 108 NLRB 207. This decision was enforced on March 7, 1955 (re-hearing denied April 7) by the United States Court of Appeals for the Seventh Circuit in a decision reported at 220 F. 2d 3.

Furthermore, on October 26, 1954, the National Labor Relations Board issued a further complaint charging the Kohler Company with unfair labor practices within the meaning of the federal statute. Hearings on this complaint, which is case #13-CA-1780, commenced in February, 1955 and are continuing.

The Supreme Court of Wisconsin in its decision took cognizance of these proceedings and of the continuing exercise of jurisdiction by the federal board over the labor relations of the Kohler Company (both in the representation case and in the unfair labor practice proceedings).[2]

[2] Although no record of the current and continuing unfair labor practice proceeding by NLRB against Kohler Company is included in the record in this appeal, that proceeding is a public record and we believe we may with propriety advise the Court that all of the acts and conduct from which appellant was enjoined by the Wisconsin Employment Relations Board are pleaded by appellee, Kohler Company, in defense of the NLRB complaint and in justification for its own conduct charged as unfair labor practices under the National Labor Relations Act and that proof of all such acts and conduct has already been received by the Trial Examiner of NLRB and is presently part of the record in that continuing proceeding.

How the Federal Question is Presented.

The federal question was raised in the first instance before the Wisconsin Employment Relations Board by written answer to the complaint challenging in Paragraphs 1 and 2 the jurisdiction of the Wisconsin Employment Relations Board, on the ground that the National Labor Relations Board had exclusive jurisdiction over the subject matter (R. 125-126).

It was raised in the Circuit Court of Sheboygan County by written answer to the petition for enforcement (R. 118-120). Repugnancy of the proposed construction of the Wisconsin Employment Peace Act to the federal labor statute (and by implication to the Commerce and Supremacy clauses of the United States Constitution) was specifically urged. It was also raised in the petition of appellant (and others) for review filed in the Circuit Court (*dehors* the Record but noted in the opinions filed by both the Circuit and the Supreme Court; Appendices D and C).

The federal question was again presented in the Wisconsin Supreme Court in accordance with that Court's Rule 6 (2), 240 Wis. viii, the material part of which reads:

> "The question or questions involved on appeal or writ of error shall be stated briefly without detail or discussion, without names, dates, amounts, or particulars of any kind. Following each question there shall be a statement indicating whether the question was affirmed, negatived, qualified, or unanswered by the court below."

The federal question was raised before the Supreme Court of Wisconsin in accordance with this rule (R. 2). It was renewed in the Motion for Rehearing. A major portion of the opinion of the Supreme Court was addressed to

the question of state as against federal jurisdiction (Appendix C pages 9a through 14a).

In each of these state tribunals the jurisdiction of the Wisconsin Employment Relations Board was upheld and the contention of appellant that such a construction of the Wisconsin Employment Peace Act was repugnant to the National Labor Relations Act, as amended, was denied.

THE QUESTIONS ARE SUBSTANTIAL

Wisconsin in this case purported under its own labor statute to regulate conduct affecting interstate commerce which has been made an unfair labor practice under the National Labor Relations Act, as amended. This is in direct conflict with principles enunciated in *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468; 75 Sup. Ct. 480; *Garner v. Teamsters Union*, 346 U. S. 485; 74 Sup. Ct. 161; *General Drivers v. American Tobacco Co.*, 348 U. S. 978; 75 Sup. Ct. 569; *Plankinton Packing Company v. Wisconsin Employment Relations Board*, 338 U. S. 953; 70 Sup. Ct. 491; *Building Trades Council v. Kinard Construction Company*, 346 U. S. 933; 74 Sup. Ct. 373. Insofar as state regulation of such conduct under a state labor statute still appears justifiable in light of this Court's decisions in *Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U. S. 740; 62 Sup. Ct. 820 and *International Union v. Wisconsin Employment Relations Board*, 336 U. S. 245; 69 Sup. Ct. 516, these earlier decisions should be reconsidered and reinterpreted. We believe such reinterpretation was in fact expressly announced by this Court in the *Garner* and *Anheuser-Busch* decisions, *supra*. Consequently, the decision below is in conflict with *Allen-Bradley Local v. Wisconsin Employment Relations Board* and *International Union v. Wisconsin Employment Rela-*

tions Board (the so-called *Briggs Stratton* case) as well. In any event an important question in federal-state relations regarding industrial controversies is presented by this case.

* * * * *

The general principles of *federal pre-emption* under the Commerce and Supremacy Clauses, both as they apply to labor relations and otherwise, are so well established as to require but briefest reiteration. Where Congress has taken a field in hand and indicated the substantive and adjective law for its regulation, the states may not regulate the same field in duplication or complementation of, or in opposition to, the federal law. *Houston v. Moore*, 5 Wheat. 1, 20-23 (1820); *Charleston & Carolina Railroad v. Varnville Co.*, 237 U. S. 597, 604; 35 Sup. Ct. 715; *Missouri Pacific Railroad Co. v. Porter*, 273 U. S. 341, 345, 346; 47 Sup. Ct. 383, 384, 385.

These principles were recently given sweeping application when this Court reversed *per curiam* and without opinion a decision of the Kentucky Court of Appeals. That court, in *Drivers Union v. American Tobacco Co.*, 264 S. W. 2d 250, upheld an injunction restraining conduct characterized by the state court:

> "* * * as a violation of the common law, the constitutional law and the statutory law of Kentucky. More than that, the illegal conduct of the employees could subject them to criminal prosecution."

This court reversed, citing *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468; 75 Sup. Ct. 480, and *Bus Employees v. Wisconsin Employment Relations Board*, 340 U. S. 383; 71 Sup. Ct. 359. We conclude the state was held without jurisdiction whatever to regulate such conduct for the reason it was, if not protected by the National Labor Re-

It follows that the action of the state in this case flies directly in the teeth of well established principles of federal pre-emption of and exclusive federal jurisdiction over labor relations affecting commerce. This is particularly true as Wisconsin in this case sought to proceed under its own labor statute. It was pointed out in *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468; 75 Sup. Ct. 480, 484 that:

> "'A state may not enjoin under its own labor statute conduct which has been made an 'unfair labor practice' under the federal statute.'"[4]

Wisconsin here did precisely what this Court said it may not do, namely, proceed *under its own labor statute* to enjoin conduct prohibited as an unfair labor practice by the National Labor Relations Act, as amended. Indeed, as we construe the *per curiam* reversal in *General Drivers v. American Tobacco Co.*, 348 U. S. 978; 75 Sup. Ct. 569, the state is now *totally* precluded from regulating *in any manner* such conduct. For the conduct there held to be pre-empted was a violation of the constitutional, common, statutory and criminal law of Kentucky.

Even if the *American Tobacco* decision, *supra*, does not support the proposition stated above, it may be argued, indeed, it may for purposes of this case, be conceded (although we do not), that the particular vice which must here be corrected is the attempted enforcement of *labor policy* by the state in duplication and complementation of and possible conflict with the federal labor policy. Merely

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[4] Citing *Garner v. Teamsters Union*, 346 U. S. 485; 74 Sup. Ct. 161; *Plankinton Packing Co. v. WERB*, 338 U. S. 953; 70 Sup. Ct. 491; *Building Trades Council v. Kinard Construction Corp.*, 346 U. S. 933; 74 Sup. Ct. 373.

to hold this impermissible would leave the state still free to enforce its criminal laws, common law (of torts, for example), and equity jurisdiction of *general* applicability with regard to the conduct involved. This distinction has been suggested by a number of commentators.[5] It is also implied in the case of *United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656; 74 Sup. Ct. 833, which decision allowed recovery of damages in a common law tort action for the reason that no compensatory or administrative relief was available under the federal statutes although the conduct involved was also an unfair labor practice under the Taft-Hartley Act.

We suggest the distinction so drawn is on deeper consideration not tenable. The form taken by attempted state regulation of federally controlled conduct should not, it seems to us, substantially affect the application of the pre-emption doctrine the purpose of which it is to avoid possible conflict with the federal law. And it is unrealistic to say that a state, in applying its common law or equity jurisdiction, is *not* enforcing labor policy in the sense of affecting the balance in a labor dispute. The abuse of equity jurisdiction and of the injunction in a labor relations context (in the absence of anti-injunction statutes imposing true equitable standards on the judiciary) is notorious. Frankfurter and Greene, *The Labor Injunction*, Encylopedia of Social Sciences, 1932, Vol. VIII, p. 653 (Macmillan, N. Y.). Common law tort actions arising out of labor disputes tend to be characterized by the imposition of so-called punitive damages in staggering

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[5] Cox, *Federalism in Labor Law*, 67 Harv. L. Rev. 1297, 1321 (1954); Ratner, *Problems of Federal State Jurisdiction in Labor Relations*, 3 Labor L. J. 750, 762 (1952).

amounts.[6] Indeed, we respectfully suggest reconsideration of the *Laburnum* decision is warranted. Congress *has* in Sections 301 and 303 of the Taft-Hartley Act (29 U. S. C. sections 185 and 187) set forth provisions for damage actions which seem to us to indicate the extent to which it meant to make that remedy available in labor relations matters affecting interstate commerce. The comprehensive scheme of regulation of labor relations affecting commerce embodied in the Labor Management Relations Act, 1947, would seem to leave no authority in the state over any conduct within the reach of that Act beyond the ordinary exercise of "police power" for the maintenance of the public peace.

There can, in any event, be no doubt here that Wisconsin has sought "*under its own labor statute* [to enjoin] conduct which has been made an 'unfair labor practice' under the federal statutes." (Italics added.) This is in direct contravention of the holding in the *Garner* case, the key element of which was characterized in *Weber v. Anheuser-Busch*, as follows:[7]

> "In Garner the emphasis was not on two conflicting labor statutes but rather on two similar remedies, one state and one federal, brought to bear on precisely the same conduct."

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[6] Judgments against appellant have been entered in the Circuit Court for Morgan County, Ala., in common law tort actions founded on prevention (by mass picketing) of access by plaintiff to his place of employment and in part on simple assault or on assault and battery in amounts exceeding by many thousands of dollars the actual damages claimed. *Russell v. UAW*, Docket No. 6149, judgment for $10,000; *Palmer v. UAW*, Docket No. 6152, judgment for $18,450; both cases pending on appeal to the Supreme Court of Ala. See also *Russell v. UAW*, 258 Ala. 614; 64 So. 2d 384, reversing trial court's order dismissing on grounds of exclusive federal jurisdiction.

[7] It was stated in *Garner*: "The conflict lies in remedies, not rights."

Heavy reliance is placed by the Wisconsin Supreme Court (and will undoubtedly be placed by appellees) on *Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U. S. 740, 62 Sup. Ct. 820, and on *International Union v. Wisconsin Employment Relations Board*, 336 U. S. 245, 69 Sup. Ct. 516, to justify the state's jurisdiction to regulate, as was done here, the conduct involved. The foregoing considerations, based as they are, on this Court's most recent pronouncements in this field, require a reinterpretation of those earlier decisions. Indeed, we believe such a reinterpretation has already been given, at least in part. We shall here seek to highlight it.

Allen-Bradley Local v. Wisconsin Employment Relations Board, 315 U. S. 740, 62 Sup. Ct. 820, is cited for the proposition that the states continue free to enjoin mass picketing, threats of violence, property damage, obstruction of public roads, etc. However, it must be emphasized that that case was decided long *before* the Taft-Hartley amendments to the National Labor Relations Act prohibited such conduct as union unfair labor practices. *Hill v. Florida*, 325 U. S. 538, 65 Sup. Ct. 1373, recognized this in pointing out that the basis for the decision in *Allen-Bradley* was that the Wagner Act did *not* regulate mass picketing, threats of violence, and similar conduct.* This Court's most recent decisions point out this same crucial fact. Thus, Justice Frankfurter, speaking for the Court in *Anheuser-Busch* explains the *Allen-Bradley* decision as follows:

> "The Court held that such conduct was not subject to regulation by the federal Board, either by prohibition or by protection."

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* "Certain conduct, such as mass picketing, threats, violence, and related actions, we held [*in Allen-Bradley*] were not governed by the Wagner Act, and hence Wisconsin was free to regulate them." *Hill v. Florida*, 325 U. S. 538, 539, 65 Sup. Ct. 1373, 1374.

But now "such conduct" *is* subject to prohibition by the federal Act and Board. And according to *Garner* the states may, under *Allen-Bradley*, exercise "historic powers" over "traditional" matters such as public safety and order, etc.[9] An administrative unfair labor practice proceeding would hardly seem to fit this description. The fact that state *courts* enforced the *administrative* order does not alter this fact. This is made especially clear by those courts' refusal to invoke such "traditional" and "historic" principles as the doctrine of clean hands in this case. We submit *Allen-Bradley v. Wisconsin Employment Relations Board, supra,* when read in light of this Court's later declarations, no longer supports the position of the court below.

The same is also true of *International Union v. Wisconsin Employment Relations Board*, 336 U. S. 245, 69 Sup. Ct. 516 (the so-called *Briggs-Stratton* case). In that case state jurisdiction was upheld for the reason the union conduct involved was neither protected by the federal Act nor forbidden by it.[10] This alone makes the decision inapplicable here. For the conduct here involved *is* prohibited by the federal Act.

Beyond this, there is, we submit a possibility that the *Briggs-Stratton* case was incorrectly decided in that the conduct there involved may have constituted violation of Section 8 (b)(3) of the Taft-Hartley Act and therefore, was "governable" by the federal board. Some support for this may be found in decisions of the National Labor

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[9] We have already indicated our respectful disagreement with this view which would distinguish among various *modes* for exercise of the states' regulatory efforts. In any case, "historic" powers were not employed in this case.

[10] It was said there the conduct either is "governable by the State or it is entirely ungoverned."

Relations Board, to wit: *Pacific Telephone Company*, 107 NLRB 1547, and *Textile Workers, CIO*, 108 NLRB 743. The difficulty of this question is revealed by the fact that the Board's decision in the last named case was recently reversed in *Textile Workers Union v. NLRB*, 36 Labor Relations Reference Manual, 2778,[11] decided by the Court of Appeals for the District of Columbia on October 27, 1955. The court in over-ruling the Board's interpretation of the statute specifically relied on the *Briggs-Stratton* decision. This Court's *prejudging* of such issues (following determination by state tribunals but without prior National Labor Relations Board proceedings) supports our further contention that the states must be prohibited from assertion of jurisdiction except following a National Labor Relations Board determination that *none*, or only *some* of the conduct involved is either protected or prohibited by the federal Act.[12] Only thus can the benefits of the orderly system of adjudication by an expert Board envisioned by Congress be preserved. "We do not think that a case by case test of federal supremacy is permissible here." (*Bethlehem Co. v. State Board*, 330 U. S. 767, 776; 67 Sup. Ct. 1026, 1031.) "Congress has occupied this field and closed it to state regulation." (*Automobile Workers v. O'Brien*, 339 U. S. 454, 457; 70 Sup. Ct. 781, 783). En-

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[11] The official citation was not available to appellant at time of writing.

[12] "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order." (*Garner v. Teamsters Union*, 346 U. S. 485, 490, 74 Sup. Ct. 161, 165.)

"The point is rather that the Board, and not the state court, is empowered to pass upon such issues in the first instance." (*Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468; 75 Sup. Ct. 480, 486.)

lightened state courts have indeed recognized and accepted these principles. *Busch and Sons, Inc. v. Retail Union*, 15 N. J. 226; 104 A. 2d 448 (1954). This is not to say, of course, that frivolous and dilatory pleas of federal jurisdiction require dismissal of the state proceeding.

These principles seem especially apt for a labor relationship clearly affecting commerce and already, in a large part of its aspects, subject to active federal regulation, as is the case here. The evils of confusion, conflict, and duplication which the pre-emption doctrine is intended to prevent become glaringly apparent when it is considered that the decision below envisions simultaneous exercise of jurisdiction by the National Labor Relations Board and the Wisconsin Employment Relations Board in unfair labor practice proceedings in the same labor dispute—a fact which the court below was aware of.

* * * * *

The questions respecting jurisdiction of the state involved in this appeal are of national concern. Numerous states have enacted labor statutes containing provisions similar to those in the Wisconsin Act (as well as the National Labor Relations Act, as amended) thus inviting the same federal-state conflict present in the instant case.[13]

Furthermore, instances of attempted regulation by the states of conduct which is also an unfair labor practice prohibited by the National Labor Relations Act, as amended, by means of common and criminal law and ex-

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[13] See compilation of state statutes at 35 Labor Relations Reference Manual 3032. A concrete illustration of virtually the same conflict between state and federal jurisdiction presented by the instant case is found in, *McQuay, Inc., v. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO*, — Minn. —, 72 N. W. 2d 81. Appellant herein is also preparing to appeal the last named decision which arises under the Minnesota Labor Relations Act.

ercise of equity jurisdiction are, of course, legion. We have pointed out how these problems are involved in certain aspects of this appeal. We submit the authority of the states in all these regards is in need of definitive settlement.

We therefore believe the questions presented by this appeal to be substantial and of public importance.[14]

Respectfully submitted,

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[14] If it is deemed by the Court that the decision below constitutes a denial of asserted federal rights rather than a validation of the state statute as against the contention of its repugnancy to the Constitution and laws of the United States, it is respectfully urged that by reason of the importance of the questions involved, the Court deem the present jurisdictional statement to be in the nature of an application for certiorari under 28 U. S. C., Section 1257 (3), and such application be entertained. 28 U. S. C., Section 2103. *Charleston Federal Savings and Loan Association, et al. v. Alderson*, 324 U. S. 182, 187; 65 Sup. Ct. 624, 628. In this connection, the Court's attention is respectfully drawn to the order entered by Associate Justice Harold A. Burton on September 19, 1955 on appellant's application, extending time within which to petition for certiorari to and including, November 25, 1955.

APPENDIX A

WISCONSIN STATUTES 1953

Section 111.04 (page 1905):

"111.04 *Rights of employes.* Employes shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employes shall also have the right to refrain from any or all of such activities."

Section 111.06 (2) (a) (f) (page 1907):

"(2) It shall be an unfair labor practice for an employe individually or in concert with others:

(a) to coerce or intimidate an employe in the enjoyment of his legal rights, including those guaranteed in section 111.04, or to intimidate his family, picket his domicile, or injure the person or property of such employe or his family.

* * *

(f) To hinder, or prevent, by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance."

Section 111.07 (page 1908):

"111.07 *Prevention of unfair labor practices.* (1) Any controversy concerning unfair labor practices may be submitted to the board in the manner and with the effect provided in this subchapter, but nothing herein shall prevent the pursuit of legal or equitable relief in courts of competent jurisdiction."

APPENDIX B

NATIONAL LABOR RELATIONS ACT, 61 STAT. 140 ff, 29 U. S. C.

Section 157, Section 158 (b)(1), Section 160 (a) and (j):

"Sec. 157. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a) (3) of this title."

"Sec. 158 (b). It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances;"

"Section 160 (a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over

any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this subchapter or has received a construction inconsistent therewith."

"Section 160 (j). The Board shall have power, upon issuance of a complaint as provided in subsection (b) of this section charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper."

APPENDIX C

OPINION OF THE SUPREME COURT OF WISCONSIN

Nos. 240 and 277

August Term, 1954

STATE OF WISCONSIN: IN SUPREME COURT

Wisconsin Employment Relations Board,
Respondent,
v.
United Automobile, Aircraft and Agricultural Implement Workers, etc.,
Appellants.

United Automobile, Aircraft and Agricultural Implement Workers of America, etc., et al.,
Appellants,
v.
Wisconsin Employment Relations Board; et al.,
Respondents.

Appeals from two judgments of the circuit court for Sheboygan county: Arold F. Murphy, Circuit Judge, presiding. *Affirmed.*

A judgment entered September 1, 1954, enforced an order of the Wisconsin Employment Relations Board, dated May 21, 1954. A judgment entered September 9, 1954 dismissed appellants' petition for a review of the same order. The appeals from the respective judgments have been consolidated.

The Kohler Company produces and markets articles in interstate commerce. Local Union 833 UAW-CIO is the exclusive bargaining agent of the production workers of the Kohler Company, duly certified to be such by the National Labor Relations Board. The contract between the company and the union expired March 1, 1954, and negotiations between the parties for a new contract, in which the Federal Mediation and Conciliation Service participated, proved fruitless. The production employees began a strike against the company April 5, 1954. At that time the National Labor Relations Board had under consideration a complaint by the union charging the company with the commission of certain unfair labor practices in 1951 and 1952. The Board decided these adversely to the company on April 12, 1954, the company appealed to the federal courts and that appeal is pending. The National Board also has under consideration another complaint charging the company with other unfair labor practices in which, as yet, it has not reached a decision.

As soon as the strike began, the unions, through their officers and members, established a picket line around the company's premises and by various means dissuaded or prevented persons wishing to work from entering the plant. The company complained of the conduct of the pickets to the Wisconsin Employment Relations Board, alleging that the organizations and individuals named in the complaint were thereby guilty of unfair labor practices. That Board conducted a hearing on the complaint and on May 21, 1954 made findings of fact that the officers, members and agents of the union and certain named individuals had been and were then (1) engaged in mass picketing at the entrance to the plant of the Kohler Company; (2) that they have attempted to prevent the lawful work or employment of persons desiring to work for the Kohler Company by force, threats and intimidation and

by massing pickets at the plant entrances; (3) that the large numbers and mass formations around the entrances obstruct and interfere with the free use of public streets; and (4) that the officers, members and agents of the union have forcefully taken into custody persons attempting to enter the plant of the Kohler Company, forced them to accompany such officers, members and agents to the strike headquarters of the respondent union and prevented them from pursuing their lawful work and employment. That in addition officers, members and agents of the respondent union have followed the cars of persons attempting to enter or leave the Kohler Company plant and picketed their homes and have threatened the persons desiring to work with physical injury.

Upon these findings of fact the Board made its conclusions of law declaring that the officers, members and agents of the local and international unions and the named individuals have violated sec. 111.06 (2) (a) and (f), Stats., by the conduct described in the findings of fact, and the Board then issued its order commanding the organization and natural persons to cease and desist from such conduct. The Board's order also directed the following affirmative action:

> "IT IS FURTHER ORDERED that the Respondent Unions, their officers, members and agents take the following affirmative action
>
> "1. Limit the number of pickets around the Kohler Company premises to a total of not more than 200, with not more than 25 at any one entrance. Such pickets are to march in single file and to at all times maintain a space at least 20 feet in width at each entrance to the Kohler Company premises over which pickets will not pass and on which persons either on foot or in conveyance may freely enter or leave the premises without interference."

The statutory provisions which the Employment Relations Board concluded had been violated read:

> "111.06 (2) It shall be an unfair labor practice for an employe individually or in concert with others:
>
> "(a) To coerce or intimidate an employe in the enjoyment of his legal rights, including those guaranteed in section 111.04, or to intimidate his family, picket his domicile, or injure the person or property of such employe or his family.
>
> * * *
>
> "(f) To hinder or prevent, by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance."

The Board's order was entered May 21, 1954. On May 25, 1954 the Board petitioned the circuit court alleging that the organizations and persons affected by its order had refused to obey it but were continuing to engage in the conduct which the order prohibited. Other jurisdictional facts were alleged in the petition and the Board demanded a judgment and decree of enforcement. The unions and natural persons responded by denying their violation of the Board's order and, further, alleged that the Company is engaged in interstate commerce, that the Wisconsin Employment Relations Board is without jurisdiction to hear and determine the issues which it here attempts to determine because the field of labor-management relations with which the Board attempts to deal has been preempted by Congress through the enactment of the Labor-Management Relations Act of 1947, as amended,

(the Taft-Hartley Act) and jurisdiction in the premises exists exclusively in the National Labor Relations Board. The answer also alleged that the circuit court was without jurisdiction to enforce the Wisconsin Board's order because of the federal preemption of the field; and it denied that the findings of fact made by the Wisconsin Board were supported by credible competent evidence.

The circuit court rendered a written decision August 30, 1954 determining each issue favorably to the petition of the Wisconsin Employment Relations Board and on September 1, 1954 it entered judgment confirming the order of the Board and, by an injunction, decreed enforcement of that order. The injunction directed that the Union, their officers, members and agents

"A. Immediately cease and desist from:

"1. Coercing and intimidating any person desiring to be employed by the Kohler Company in the enjoyment of his legal rights, intimidating his family, picketing his domicile, or injuring the person or property of such persons or his employe.

"2. Hindering or preventing by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of lawful work or employment by any person desirous of being employed by the Kohler Company.

"3. Obstructing or interfering in any way with entrance to and egress from the premises of the Kohler Company.

"4. Obstructing or interfering with the free and uninterrupted use of public roads, streets, highways, railways or private drives leading to the premises of the Kohler Company.

"B. Take the following affirmative action:

"1. Limit the number of pickets around the Kohler Company premises to a total of not more

than 200, with not more than 25 at any one entrance. Such pickets are to march in single file and to at all times maintain a space at least 20 feet in width at each entrance to the Kohler Company premises over which pickets will not pass and on which persons either on foot or in conveyance may freely enter or leave the premises without interference."

The unions and individuals enjoined have appealed from the judgment.

Brown, J. The conduct which the Wisconsin Employment Relations Board found to be a violation of sec. 111.06, Stats., as unfair labor practices, is virtually the same conduct as that which it had found to be a similar violation in *Allen-Bradley Local 1111 v. Wisconsin E. R. Board* (1941), 237 Wis. 164, 295 N. W. 791. The present order and injunction are essentially the same as those issued by the Board and the court in the *Allen-Bradley Case*. The principal attack on it then, like the attack on the present order, was made on the ground that federal labor legislation has preempted the field and the National Labor Relations Board has exclusive jurisdiction over this controversy; which grows out of and affects labor relations. The enforcement order issued by the circuit court in the *Allen-Bradley Case* in all substantial particulars is the same as the one issued by the circuit court in the case at bar. We sustained the circuit court and the Board on such jurisdictional questions and on their exercise of the jurisdiction and we were affirmed by the Supreme Court of the United States in *Allen-Bradley Local v. Board*, 315 U. S. 740, 86 L. Ed. 1154.

As the facts of the present matter so closely parallel the *Allen-Bradley* facts there would be little cause to do more than affirm the judgment of the circuit court on the authority of *Allen-Bradley* except for a distinction to which

appellants call attention, namely, that the Federal Labor Act has been amended since, in *Allen-Bradley*, the United States Supreme Court held that it did not deprive the state of jurisdiction under such circumstances. Appellants' argument is that the United States' court was then construing the National Labor Relations Act (the Wagner Act), which concerned itself only with unfair labor practices on the part of employers and thus left employes' practices to be controlled by the states; but that Act was amended in 1947 by the National Labor-Management Relations Act (the Taft-Hartley Act), which does define and discipline unfair labor practices by employes. Therefore, appellants assert, even though *Allen-Bradley* may have been right in its day, the present legislation, by bringing employes' labor practices within its scope, ousts state control and confers exclusive jurisdiction over them in the National Labor Relations Board.

The authoritative interpretation of federal statutes rests in the federal courts and their highest court does not agree with appellants' contention that the Taft-Hartley Act has taken from the states jurisdiction over such manifestations of labor relations as mass picketing, intimidation and obstruction of streets. In cases arising under Taft-Hartley the United States Supreme Court continued to cite *Allen-Bradley* to illustrate the circumstances in which the state authority may still operate. Thus, in *International Union v. Wisconsin Employment Relations Board* (1949), 336 U. S. 245, 93 L. Ed. 654, which was first before this court and is reported in 250 Wis. 550 (the Briggs & Stratton case), the state court enjoined recurrent and unannounced work stoppages designed to put pressure on the employer. The injunction was issued while the Wagner Act was in effect but the restraint continued after that act was superseded by Taft-Hartley. The Supreme Court of the United

States therefore declared that it considered the state action in relation to both Federal Acts. And it said:

> "* * * However, as to coercive tactics in labor controversies, we have said of the National Labor Relations Act what is equally true of the Labor Management Relations Act of 1947, that 'Congress designedly left open an area for state control' and that the 'intention of Congress to exclude States from exercising their police power must be clearly manifested.' (Citing *Allen-Bradley.*) We therefore turn to its legislation for evidence that Congress has clearly manifested an exclusion of the state power sought to be exercised in this case."

So turning, the court found no such evidence and it said:

> "* * * While the Federal Board is empowered to forbid a strike, when and because its purpose is one that the Federal Act made illegal, it has been given no power to forbid one because its method is illegal —even if the illegality were to consist of actual or threatened violence to persons or destruction of property. Policing of such conduct is left wholly to the states. * * *
>
> "It seems clear to us that this case falls within the rule announced in *Allen-Bradley.* * * *"

More recently the court has declared the same principle, crediting it to the same source. Thus in *Garner v. Teamsters Union* (1953), 346 U. S. 485 98 L. Ed. 228, the employer sought to enjoin peaceful picketing by state action. The United States Supreme Court, distinguishing the situation from that in *Allen-Bradley,* said (98 L. Ed. 228, 238):

> "This is not an instance of injurious conduct which the National Labor Relations Board is without express power to prevent and which therefore either is 'governable by the State or it is entirely ungov-

> erned.' In such cases we have declined to find an implied exclusion of state powers. *International Union, U. A. W. v. Wisconsin Employment Relations Board*, 336 U. S. 245, 254, 93 L. ed. 651, 663, 69 S. Ct. 516. *Nor is this a case of mass picketing, threatening of employees, obstructing streets and highways, or picketing homes. We have held that the state still may exercise 'its historic powers over such traditionally local matters as public safety and order and the use of streets and highways.' Allen-Bradley Local, U. E. R. M. W. v. Wisconsin Employment Relations Board*, 315 U. S. 740, 749, 86 L. ed. 1154, 1164, 62 S. Ct. 820. (Our italics.)''

Still more recently, in *United Workers v. Laburnum Corp.* (1954), 347 U. S. 656, 98 L. Ed. 1025, the court repeated the language just quoted from the *Garner Case*, again giving credit to *Allen-Bradley*.

And most recently, on March 28, 1955 in *Weber et al. v. Anheuser-Busch, Inc.*, Sup. Ct. of the United States, Advance Sheets No. 97, in setting aside a state court's injunction against picketing and commenting on the nature of the picketing and the law applicable to it, the court said:

> '' * * * We do not read this as an unambiguous determination that the IAM's conduct amounted to the kind of mass picketing and overt threats of violence which under the *Allen-Bradley Local* case give the state court jurisdiction. * * *''

In the case before us the picketing and other union measures are of the precise kind that they were in the *Allen-Bradley* strike. It was held there that the state's jurisdiction to enjoin them was not impaired by the National Labor Relations Act. *Allen-Bradley Local v. Wisconsin Employment Relations Board, supra.* Neither age nor new legislation have withered the authority of that

statute defines as state unfair labor practices conduct which is illegal also on other grounds. We consider Wisconsin is at liberty to use its own legislative discretion in its method of policing such labor relations as these which do not fall within the exclusive jurisdiction conferred by Congress on the National Labor Relations Board.

Next, appellants submit that even if the Wisconsin Employment Relations Board could take jurisdiction of this controversy, make the findings and conclusions which it made, and issue the order commanding the appellants to cease and desist, the circuit court had no jurisdiction to entertain the Board's petition for an enforcement order unless, first, some proceeding was had which established that the Board's order had been disobeyes. The record does not show any such proceeding here. The Board simply went to the circuit court with a petition alleging the appellants' disobedience. But we find no statutory requirement of a jurisdictional pre-requisite such as appellants assert.

Sec. 111.07, Stats., so far as material to the contention, provides:

> "(7) If any person fails or neglects to obey an order of the board while the same is in effect the board may petition the circuit court of the county wherein such person resides or usually transacts business for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court its record in the proceedings, including all documents and papers on file in the matter, the pleadings and testimony upon which such order was entered, and the findings and order of the board. Upon such filing the board shall cause notice thereof to be served upon such person by mailing a copy to his last known post-office address, and thereupon the court shall have jurisdiction of the proceedings and of the question determined therein. . . ."

The statute does not expressly require the board to hold a hearing to determine if its order has been violated, nor is the hearing required by implication. A mere administrative decision that the order is not obeyed is sufficient. If the board is satisfied that a violation has taken place it may petition the court for enforcement and shall file its record with the court and give notice, upon which the statute gives the court jurisdiction. There requirements were complied with. We consider that thereby jurisdiction of these proceedings was in the circuit court.

Finally, appellants contend that the evidence does not support the Board's findings. We have read the record. Numerous witnesses, whom it was the right of the Board to believe, testified to the acts of mass picketing, blocking the entrances of the plant, interference with the use of public streets, picketing of homes and intimidation of employees who proposed to work. Exhibits in the way of union publications confirm much of such testimony. Credible and competent evidence in abundance is recorded to support each of the findings of fact. Sec. 111.07 (7), Stats., declares, then, that such findings shall be conclusive in the circuit court proceeding.

Appellants' brief asserts that the Kohler Company has in its plant a supply of clubs, guns and tear gas, and they submit that it is unjust for the state agencies to restrain the actions of appellants while doing nothing about that. If the condition mentioned by appellants is true, still it has nothing to do with the questions which their brief states are those to be determined by the appeal, namely, (1) the jurisdiction of the Wisconsin Employment Relations Board and the circuit court, and (2) whether the record support the judgment. If the appellants considered, or do now consider, the presence of these munitions wrongful, as an unfair labor practice, they could, and

still can petition the Board for its abatement, exactly as the Kohler Company petitioned for relief from what it deemed to be unfair labor practices on the part of appellants. In the absence of such a petition the question of a Kohler arsenal was not before the Board or the court. In any event, a Board order on that subject would not affect the one actually made concerning *appellants'* activities. We do not presume to say now that the company may or may not have these articles in its plant but we observe that if wrongs on each side are the subject of petitions by the parties aggrieved both wrongs should be restrained. The absence of a petition concerning one of them does not require that restraint of the one which was protested in the manner and form provided by statute be refused.

In summary, the evidence presented to the Employment Relations Board supports the Board's findings, conclusion and order; the Board had jurisdiction to entertain the proceeding before it; and the circuit court had jurisdiction to entertain and to grant the petition of the Board for an enforcement order. No abuse of jurisdiction appears. Therefore the judgments of the circuit court must be affirmed.

By the Court.—Judgments affirmed.

APPENDIX D

OPINION AND DECISION OF THE CIRCUIT COURT

Title and Venue

Two separate proceedings are before the Court under two different titles. The first filed was initiated by a petition filed by the Wisconsin Employment Relations Board against two unions and their officers, members of the union, and several named individual respondents. The second proceedings is upon the petition of both unions against the Wisconsin Employment Relations Board and the Kohler Company as respondents, seeking a review of the proceedings from which the order emanated and was filed, and asking for a reversal of the order and a dismissal of the complaint of the Kohler Company. This memorandum decision, of course, must relate to both proceedings.

I believe that it will be agreed by anyone who has made even a casual study of Chapter 111 of the Wisconsin Statutes and the cases that have construed that Act during the years, that the inquiry before this Court in the first proceedings, asking for a judgment of enforcement of the order of the Board, gives to the Court a very limited area and the inquiry is very confined.

This Court sits now as an appellate court to review the proceedings had before the Board and to pass upon the question of whether errors of law were committed by the Board in exercising the jurisdiction that the Statutes vest the Board with. The Court is not authorized in these proceedings to take testimony. The Court could, upon timely application and notice, order that more testimony or addi-

tional evidence be taken by the Board. I agree with counsel for the union that no formal motion in that regard is necessary, but the stubborn fact is no application to do that, that is, to remand the proceedings back to the Board for the taking of additional testimony, has been made and the desire is stated only categorically and casually in the arguments of counsel in these proceedings, unless it be considered that the petition of the two unions to review necessarily encompasses the request that it be remanded for further testimony.

The Court has made a very careful study of the record in both proceedings, that is, to say that all the pleadings have been read and studied, all of the testimony has been read and studied and certain portions of it read a second time The Court did not, because of a peculiar circumstance, have time to examine the some 154 or 155 exhibits that were introduced at the hearings before the Board, which consumed many days.

I personally regret that the inquiry before this Court in these proceedings is so narrow. I would much prefer if this Court had authority in law to apply equitable principles as would be the situation if the complainant here had seen fit to invoke the equity jurisdiction of this Court in seeking a temporary injunction and eventually a permanent injunction. Reasonable minds may differ and disinterested, impartial persons may not agree to the seriousness of the acts which the Board has found constitute unfair labor practice. This Court has no right to make inquiry as to the fairness or unfairness of the original demands of the Union as made early in the year, February, 1954, or maybe preceding the expiration of the contract in February, 1954, maybe the demands were in some form made in January of 1954. The Court has no right to com-

ment upon the soundness of the Company's position as to the demands of the two unions. The wisdom or lack of wisdom in calling the strike is not for this Court to decide. This Court has no right now to even make any observations as to the realistic views or attitudes of either the Company, who is the complainant here, or the two unions, nor in any type of critical language make any type of findings, even though it be dicta, as to the character and the tempo and the type of settlement negotiations. The Court has no right to pass upon the good faith or lack of good faith of any parties to this dispute even though the Court may have its own opinion with reference to all of these subjects.

The principal contention of the two unions is that the Labor Board and this Court lack jurisdiction in the matter now before the Court in a formal manner. The lack of jurisdiction as claimed by the respondent unions is based upon the claim that the National Labor Relations Act of 1947, the Congressional enactment, has pre-empted the field of labor controversies, employer and employee management and that there is no field left for state agencies like the Wisconsin Employment Relations Board and the Wisconsin courts to act with jurisdiction. With this contention I must respectfully disagree with the unions that are parties to these proceedings.

It is perfectly clear that proper state agencies, in which authority is given by statutes, and the courts that have certain inherent powers, have a right even in the labor controversy field where unfair labor practices are charged, that state administrative boards like the plaintiff in these actions or the petitioner in this one action, have a right and an area based upon state's rights, as distinguished from the rights under the Constitution that the Federal Government has pre-empted unto itself.

It would seem most unreasonable and illogical if the court should hold that a state court of record would be impotent to restrain the commission of acts that are in themselves illegal per se. There is no inherent right on the part of individual members of a union or the union as an organization or its officers in directing it to engage in mass picketing. There is no inherent right on the part of any of the members of unions to intimidate, to threaten, to assault or to unlawfully interfere with the liberties of any person, so it would seem to me that the complaint is groundless when it is exerted on the proposition that those types of acts should not be restrained.

There is one point made by counsel for the Unions that has given me pause and has concerned me during these arguments, to which I listened most attentively. The fact is the question arose in my mind independent of counsel's argument but counsel's logical approach to the question further agitated my thinking and made me less sure of a position that could be taken with reference to it, which is the position taken by the Labor Relations Board. That point is that something must transpire after the filing of the order, which was based upon findings of fact and conclusions of law relating to the testimony taken at the various hearings, and that some evidence must be produced before this Court or something in a formal way pointed out in these proceedings that shows that at a particular time after the filing of the order that the Wisconsin Employment Relations Board could come into court and ask for an enforcement decree of the order that it had previously filed. I believe the answer to that claim, as good as it sounds, is found right in the statute itself and if you are to give full and ordinary meaning to the use of words, the Court must disagree with that contention, with the others.

Sub-section (7) of Section 111.07 says:

> "If any person fails or neglects to obey an order of the Board while the same is in effect the board may petition the circuit court of the county wherein such person resides or usually transacts business for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court its record in the proceedings, including all documents and papers on file in the matter, the pleadings and testimony upon which such order was entered, and the findings and order of the board. Upon such filing the board shall cause notice thereof to be served upon such person, * * * and thereupon the court shall have jurisdiction of the proceedings and of the question determined therein."

That statute is purely a directory statute. The plaintiff, Wisconsin Employment Relations Board, is an administrative body invested with certain powers, authority and duties and the presumption is that the members of that Board, being public officers, acted within the law and within their jurisdiction and that they had not only the right but the duty to exercise a discretion as to whether enforcement proceedings should be initiated or not. The statute does not define or declare the type of investigation to be made by the Board after the order is filed, which would entitle them or require them, that is, the Board, to initiate proceedings for enforcement of the order. This record is sufficient unto itself to show that the Board did not violate its discretion and that its discretion was exercised in favor of instituting these proceedings.

It follows from what has been said that the petition for review by the two Unions named as petitioners against the Wisconsin Employment Relations Board and the Kohler Company, asking for a review of the order and a reversal

of the order and a dismissal of the complaint, be and hereby is dismissed.

It follows, of course, from what has been said that the plaintiff, Wisconsin Employment Relations Board, in its enforcement proceedings against the named respondents, shall have judgment of enforcement of the order filed by the Wisconsin Employment Relations Board on May 21, 1954, without modification and the order is in all things confirmed.

Dated: August 30, 1954.

JUDGMENT

Title and Venue

The above entitled matter having come on for hearing on the 30th day of August, 1954, before the Court without a jury on the petition of the Wisconsin Employment Relations Board pursuant to Sec. 111.07 (4) and (7) of the Wisconsin Statutes for enforcement of a certain interlocutory order of the board, Beatrice Lampert appearing for the Wisconsin Employment Relations Board, Max Raskin and David Rabinovitz appearing for the respondents, and Lyman Congor and Lucius P. Chase appearing for the intervenor, Kohler Company, and the court having considered the arguments and briefs of counsel, and having reviewed the record returned by said board and being fully apprised in the premises, and having on the said date issued from the bench its decision and directions for judgment, Now, Therefore,

It is ordered, adjudged and decreed that the interlocutory order of the Wisconsin Employment Relations Board entered May 21, 1954 in the matter of the "Kohler Co., a

Wisconsin Corporation, Complainant, v. United Automobile Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations—UAW CIO, Harvey Kitzman, Frank J. Sahorski, Robert Burkart, Jess Ferrazza, Donald Rand, James Fiore, Frank Walleck, Raymond Majerus, Local Union Number 833, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations—UAW CIO, Allen J. Graskamp, Arthur Bauer, E. H. Kohlagen, John J. Stieber, Bernard Majerus, Elmer H. Gross, Kenneth Nitsche, Curtiss R. Nack, Leo J. Prepster, Leo J. Breirather, Elmer A. Oskey, Gordon Majerus, Kenneth G. Klein, William E. Rawling, Edward C. Kalupa, John Konec, John M. Martin, Mattie Marchiando, Arbor L. Brewer, Peter J. Gasser, Jr., Nick Vrekovic, Franklyn S. Schroeder, David Rabinovitz, John Doe and other persons unknown, respondents, Case III, No. 5257 Cw-213, Decision No. 3740, be and the same is hereby confirmed and enforced, the court reserving jurisdiction to make such further order or judgment in the premises as may be necessary to give full force and effect to the order of the board and the enforcement thereof, on the evidence in the record or on the taking of such further evidence as appears to the court to be necessary, the present judgment and decree of the court to be deemed interlocutory as to those matters that may call for or require further action on the part of the court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the respondents United Automobile Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations—UAW CIO, Local Union Number 833, United Automobile Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations—UAW CIO, their officers, members and agents:

A. Immediately cease and desist from:

1. Coercing and intimidating any person desiring to be employed by the Kohler Company in the enjoyment of his legal rights, intimidating his family, picketing his domicile, or injuring the person or property of such persons or his employe.

2. Hindering or preventing by mass picketing threats, intimidation, force or coercion of any kind the pursuit of lawful work or employment by any person desirous of being employed by the Kohler Company.

3. Obstructing or interfering in any way with entrance to and egress from the premises of the Kohler Company.

4. Obstructing or interfering with the free and uninterrupted use of public roads, streets, highways, railways or private drives leading to the premises of the Kohler Company.

B. Take the following affirmative action:

1. Limit the number of pickets around the Kohler Company premises to a total of not more than 200, with not more than 25 at any one entrance. Such pickets are to march single file and to at all times maintain a space at least 20 feet in width at each entrance to the Kohler Company premises over which pickets will not pass and on which persons either on foot or in conveyance may freely enter or leave the premises without interference.

Dated September 1, 1954.

APPENDIX E

FINDINGS OF FACT, CONCLUSIONS OF LAW AND INTERLOCUTORY ORDER OF WISCONSIN EMPLOYMENT RELATIONS BOARD

Title and Venue.

The above entitled matter having come on for hearing before the Wisconsin Employment Relations Board on the 4th day of May, 1954, and having been adjourned and rescheduled on the 12th day of May, 1954, and testimony having been taken on May 12, 13, 17, 18, and 19, 1954; the full Board being present and after considering the testimony, the arguments of counsel and being fully advised the Board makes the following Findings of Fact, Conclusions of Law, and Interlocutory Order.

FINDINGS OF FACT

1. That the officers, members and agents of Local Union No. 833, United Automobile Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations have engaged and are now engaging in mass picketing at the entrance to the plant of the Kohler Company at the village of Kohler, Wisconsin, and have been assisted and advised in such activities by Frank J. Sahorske, Robert Burkart, Jess Ferrazza, Donald Rand, James Fiore, Frank Walleck and Raymond Majerus, International Representatives of the United Automobile Aircraft and Agricultural Implement Workers of America.

2. That the officers, members and agents of the Respondent union have attempted by force, threats, intimidation and by massing pickets at the various entrances to the Kohler Company plant in Kohler, Wisconsin, to prevent

the lawful work or employment by persons desiring to work for the Kohler Company.

3. That the officers, members and agents of the Respondent Union by gathering in large numbers and mass formation around the various entrances to the Kohler Company and obstructing and interfering with the free use of the public streets in the village of Kohler, Wisconsin, particularly with the Industrial Road.

4. That officers, members and agents of the Respondent Union have forcefully taken into custody persons attempting to enter the plant of the Kohler Company, forced them to accompany such officers, members and agents to the strike headquarters of the Respondent Union and prevented them from pursuing their lawful work and employment. That in addition officers, members and agents of the Respondent Union have followed the cars of persons attempting to enter or leave the Kohler Company plant and picketed their homes and have threatened the persons desiring to work with physical injury.

Upon the basis of the above and foregoing Findings of Fact, the Board makes the following:

CONCLUSIONS OF LAW

That the officers, members and agents of Local Union No. 833, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, and Frank J. Sahorske, Robert Burkart, Jess Ferrazza, Donald Rand, James Fiore, Frank Walleck, and Raymond Majerus as International Representatives, representing the United Automobile Aircraft and Agricultural Implement Workers of America, have violated Section 111.06 (2) (a) of the Wisconsin Statutes by picketing the domicile of persons desiring to

work at the Kohler Company, and Section 111.06 (2) (f) of the Wisconsin Statutes by hindering and preventing persons desiring to be employed by the Kohler Company by means of massed picketing and by means of obstructing and interfering with entrance to and egress from the plant of the Kohler Company and by obseructing and interfering with the free and uninterrupted use of the public roads, streets and highways.

Upon the basis of the above and foregoing Findings of Fact, and Conclusions of Law, the Board makes the following:

ORDER

IT IS ORDERED that the Respondent Unions, their officers, members and agents immediately cease and desist from

1. Coercing and intimidating any person desiring to be employed by the Kohler Company in the enjoyment of his legal rights, intimidating his family, picketing his domicile, or injuring the person or property of such persons or his employe.

2. Hindering or preventing by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of lawful work or employment by any person desirous of being employed by the Kohler Company.

3. Obstructing or interfering in any way with entrance to and egress from the premises of the Kohler Company.

4. Obstructing or interfering with the free and uninterrupted use of public roads, streets, highways, railways or private drives leading to the premises of the Kohler Company:

IT IS FURTHER ORDERED that the Respondent Unions, their officers members and agents take the following affirmative action:

1. Limit the number of pickets around the Kohler Company premises to a total of not more than 200, with not more than 25 at any one entrance. Such pickets are to march in single file and to at all times maintain a space at least 20 feet in width at each entrance to the Kohler Company premises over which pickets will not pass and on which persons either on foot or in conveyance may freely enter or leave the premises without interference.